

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GARY N. GRISWOLD

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Appeal No. 95-3919  
Application 07/907,934<sup>1</sup>

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ON BRIEF

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Before HAIRSTON, KRASS and JERRY SMITH, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed June 29, 1992. According to applicants, the application is a continuation-in-part of Application 07/724,180, filed July 1, 1991.

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DECISION ON APPEAL

This is an appeal from the final rejection of claims 111 through 218.

The disclosed invention relates to a method and system for monitoring the use of a licensed product at at least one licensee's site.

Claim 111 is illustrative of the claimed invention, and it reads as follows:

111. A method for monitoring the use of a licensed product at at least one licensee's site, the method comprising the steps of:

generating datagrams at regular time intervals from at least one licensee's site with a device using said licensed product;

including in each of said datagrams an address of said licensee on a communications facility, said address being designated by said communications facility without any data being provided by said licensee;

sending said datagrams including said address from said licensee's site over said communications facility to a licensor's site at regular time intervals while said licensed product is in use;

receiving said datagrams at said licensor's site using a license control system;

storing in said license control system an indication of receipt of each of said datagrams; and

counting said datagrams from each licensee, using said

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license control system, as an indication of the use by the licensee of said licensed product.

The reference relied on by the examiner in the statement of the rejection is:

Katznelson	5,010,571	Apr. 23,
1991		

The following references are listed as being of record, but are not included in the statement of the rejection:

Edwards	5,014,234	May 7,
1991		
Johnson et al. (Johnson)	5,023,907	June
11, 1991		
Kroll et al. (Kroll)	5,258,906	Nov. 2,
1993		
	(filed Oct. 18,	
1990)		

Stallings, "Data and Computer Communications," Macmillan Publishing Company, 1985, pages 199 through 202.

Claims 111 through 218 stand rejected under 35 U.S.C. § 103 as being unpatentable over Katznelson.

Reference is made to the brief and the answer for the respective positions of the appellant and the examiner.

#### OPINION

We have carefully considered the entire record before us, and we will sustain the obviousness rejection of claims 132,

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135, 138 through 140, 143, 144, 147, 149, 169, 171, 172, 175, 177, 178, 180, 181, 201, 204 through 207, 210, 211 and 214, and reverse the obviousness rejection of claims 111 through 131, 133, 134, 136, 137, 141, 142, 145, 146, 148, 150 through 168, 170, 173, 174, 176, 179, 182 through 200, 202, 203, 208, 209, 212, 213 and 215 through 218.

Katznelson discloses a system (Figure 1) that includes an authorization and key distribution terminal 10 for controlling and accounting for retrieval of data by a customer data retrieval terminal 11 from a CD-ROM memory located at the customer data retrieval terminal 11. The CD-ROM contains encrypted data files, and before the customer data retrieval terminal 11 can retrieve data therefrom, the authorization and key distribution terminal 10 must first grant authorization to the terminal 11 to retrieve data from an encrypted file. To gain such authorization, a customer 11 files a file use request signal 12 that identifies the desired file, and the ID number of the requesting customer terminal. The request signal is processed by the terminal 10 to determine whether the customer terminal 11 is authorized to retrieve data from the file identified in the file use request signal 12. Such a

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determination includes checking on the status of a customer account associated with the customer terminal, and may include determining the eligibility of the customer to retrieve data from such file notwithstanding the outcome of the credit check of the customer. When authorization is granted, terminal 10 provides to the customer at terminal 11 both an encrypted file key 13 and an authorization credit data signal 14. The encrypted file key 13 is used to unlock the data file, and the credit data signal indicates an amount of credit to be extended to the customer terminal 11 for retrieval of data from the file identified in the file use request signal 12 (column 2, lines 16 through 37). A usage report 60 indicating the usage history recorded in the use history storage unit 23 is generated by the terminal 11 for communication to the terminal 10 in response to either operation of the keyboard 33 or an interrogation signal 61 received from the terminal 10 (column 4, line 65 through column 5, line 2). An authenticated usage report 62 is coupled with the unit ID number 39 in terminal 11 for communication to the terminal 10 as an authenticated usage report and unit ID signal 63 (column 5, lines 7 through 16). An authenticated credit and debit

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status report and unit ID signal 64 is sent together with the signal 63 to the terminal 10 (column 5, lines 17 through 24). Thereafter, a refresh registers command 70 is issued by terminal 10 to reset registers 23, 27 and 28 in terminal 11 to zero (column 5, lines 36 through 40).

Turning first to claim 111, appellant argues that Katznelson neither teaches nor would have suggested "generating datagrams at regular time intervals from at least one licensee's site" (Brief, page 6), "sending said datagrams including said address from said licensee's site over said communications facility to a licensor's site at regular time intervals while said licensed product is in use" (Brief, page 14), and "counting said datagrams from each licensee, using said license control system, as an indication of the use by the licensee of said licensed product" (Brief, page 15). We agree. The obviousness rejection of claims 111 and 112 is reversed.

Claim 113 includes the limitation of sending a request datagram to the licensor's site while the licensed product is in use. As indicated supra, Katznelson neither teaches nor would have suggested to the skilled artisan such transmission

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while the licensed product is in use. For this reason, the obviousness rejection of claims 113 through 131 is reversed.

With respect to claim 132, appellant argues (Brief, page 25) that it "includes means for generating a request datagram including an address of a licensee on a communication network, sending the reply datagram to the address contained in the request datagram, and denying access to the licensed product if an authorization datagram is not received." Appellant's arguments to the contrary notwithstanding, Katznelson operates in exactly the same manner. The file use request 12 includes an address (i.e., unit ID) of the terminal 11, and the reply to the terminal 11 includes that same unit ID. If an authorization is not received from terminal 10, then terminal 11 is denied access to the encrypted licensed product on the CD-ROM. Appellant's 35 U.S.C. § 112, sixth paragraph, arguments are without merit because the specification is devoid of any specific structure. The obviousness rejection of claim 132 is sustained.

The obviousness rejection of claim 133 is reversed because Katznelson does not send requests "at regular time intervals during use" of any product on CD-ROM.



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The obviousness rejection of claim 134 is reversed because Katznelson does not count requests for a product in order to compute an amount to be billed for use of a product on CD-ROM.

The obviousness rejection of claim 135 is sustained because the terminal 10 in Katznelson obtains the address/unit ID of terminal 11, without any input from terminal 11, when the encrypted file key 13 and the authenticated credit data 14 are sent to terminal 11.

The obviousness rejection of claim 136 is reversed because terminal 11 in Katznelson does not resend a request if a reply is not received from terminal 10 "within a predetermined period of time after" the request is sent.

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The obviousness rejection of claim 137 is reversed because terminal 11 in Katznelson does not transmit requests "at predetermined time intervals."

The obviousness rejection of claim 138 is sustained because the unit ID in Katznelson is a unique identification code that must be in requests and replies for authorization to gain access to data on the CD-ROM.

The obviousness rejection of claims 139 and 140 is sustained because appellant has grouped these claims with claim 132 (Brief, page 3).

The obviousness rejection of claims 141 and 142 is reversed because Katznelson does not consider a license expiration date of a product on the CD-ROM.

The obviousness rejection of claims 143 and 144 is sustained because appellant has grouped these claims with claim 132 (Brief, page 3).

The obviousness rejection of claims 145 and 146 is reversed because Katznelson does not deny use of a product "if more than a predetermined number of processes" at terminal 11 are using a licensed product from the CD-ROM.

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The obviousness rejection of claim 147 is sustained because terminal 10 in Katznelson sends a reply to terminal 11 if use of a product on CD-ROM is not approved.

The obviousness rejection of claim 148 is reversed because terminal 10 in Katznelson does not send a reply "within a predetermined time from" the sending of a request from terminal 11.

The obviousness rejection of claim 149 is sustained because appellant has not presented any patentability arguments for this claim.

The obviousness rejection of claims 150 through 152 is reversed because Katznelson is silent concerning use of one portion of a product taken from CD-ROM to control another portion of a product taken from CD-ROM.

The obviousness rejection of claim 153 is reversed because terminal 11 in Katznelson can not use any of the data on the CD-ROM "before a reply . . . is received."

The obviousness rejection of claims 154 through 156 is reversed because terminal 11 in Katznelson does not transmit requests to terminal 10 "at periodic intervals."

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The obviousness rejection of claims 157 and 158 is reversed because terminal 11 in Katznelson does not generate requests "at regular time intervals."

The obviousness rejection of claims 159 through 168 is reversed because terminal 11 in Katznelson does not send a request to terminal 10 while a product from the CD-ROM "is in use."

For all of the reasons expressed supra in connection with claim 132, the obviousness rejection of claim 169 is sustained.

The obviousness rejection of claim 170 is reversed because terminal 11 in Katznelson does not send a request "at regular time intervals during use" of a product on CD-ROM.

The obviousness rejection of claim 171 is sustained because a particular data product on the CD-ROM is identified in the request.

For all of the reasons expressed supra in connection with claim 135, the obviousness rejection of claim 172 is sustained.

For all of the reasons expressed supra in connection with claim 136, the obviousness rejection of claim 173 is reversed.

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For all of the reasons expressed supra in connection with claim 137, the obviousness rejection of claim 174 is reversed.

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For all of the reasons expressed supra in connection with claim 138, the obviousness rejection of claim 175 is sustained.

The obviousness rejection of claim 176 is reversed because the request from terminal 11 in Katznelson does not include "data indicative of the number of processes at a licensee's site currently using" a licensed product.

The obviousness rejection of claim 177 is sustained because appellant's argument (Brief, page 41) that Katznelson does not deny "use of the product when the reply denial . . . is received" is in error.

The obviousness rejection of claim 178 is sustained because appellant has grouped this claim with claim 169 (Brief, page 4).

For all of the reasons expressed supra in connection with claims 150 through 152, the obviousness rejection of claim 179 is reversed.

The obviousness rejection of claims 180 and 181 is sustained because appellant has not presented any patentability arguments for these claims.

For all of the reasons expressed supra in connection with

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claim 153, the obviousness rejection of claim 182 is reversed.

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The obviousness rejection of claims 183 through 185 is reversed because terminal 11 in Katznelson does not transmit requests "at periodic intervals" to terminal 10.

The obviousness rejection of claims 186 and 187 is reversed because terminal 11 in Katznelson does not generate requests "at regular time intervals," and because Katznelson does not have a license control system that counts requests "as an indication of the use" of a product from CD-ROM.

The obviousness rejection of claims 188 through 200 is reversed because the terminal 11 in Katznelson does not send a request to terminal 10 while a product from CD-ROM "is in use."

The obviousness rejection of claim 201 is sustained because the file use request 12 includes an address (i.e., unit ID) of the terminal 11, and because appellant's 35 U.S.C. § 112, sixth paragraph, arguments (Brief, page 47) are without merit since the specification is devoid of any specific structure.

For all of the reasons expressed supra in connection with claim 170, the obviousness rejection of claim 202 is reversed.

The obviousness rejection of claim 204 is sustained



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because appellant has grouped this claim with claim 201 (Brief, page 4).

For all of the reasons expressed supra in connection with claim 138, the obviousness rejection of claim 205 is sustained.

The obviousness rejection of claims 206 and 207 is sustained because appellant has grouped these claims with claim 201 (Brief, page 4).

The obviousness rejection of claims 208 and 209 is reversed because Katznelson does not compare an "expiration date" with a date at which a request is received.

The obviousness rejection of claims 210 and 211 is sustained because appellant has not presented any patentability arguments for these claims.

The obviousness rejection of claims 212 and 213 is reversed because a request in Katznelson does not "include data indicative of the number of processes," and because Katznelson does not deny use of a product "if more than a predetermined number of processes" using the product are running at terminal 11.

The obviousness rejection of claim 214 is sustained

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because appellant has grouped this claim with claim 201  
(Brief, page 4).

For all of the reasons expressed supra in connection with  
claim 150, the obviousness rejection of claims 215 and 216 is  
reversed.

The obviousness rejection of claims 217 and 218 is  
reversed because terminal 11 in Katznelson does not transmit  
requests "at

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periodic intervals," and because Katznelson does not count requests "as an indication of the use" of a product from the CD-ROM.

#### DECISION

The decision of the examiner rejecting claims 111 through 218 under 35 U.S.C. § 103 is affirmed as to claims 132, 135, 138 through 140, 143, 144, 147, 149, 169, 171, 172, 175, 177, 178, 180, 181, 201, 204 through 207, 210, 211 and 214, and is reversed as to claims 111 through 131, 133, 134, 136, 137, 141, 142, 145, 146, 148, 150 through 168, 170, 173, 174, 176, 179, 182 through 200, 202, 203, 208, 209, 212, 213 and 215 through 218. Accordingly, the decision of the examiner is affirmed-in-part.

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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED-IN-PART

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
ERROL A. KRASS	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
JERRY SMITH	)	
Administrative Patent Judge	)	

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CUSHMAN, DARBY & CUSHMAN  
Ninth Floor  
1100 New York Avenue, N.W.  
Washington, D.C. 20005-3918